

Senate Bill No. 1248

CHAPTER 548

An act to amend Sections 2850, 2851, and 2854 of the Probate Code, relating to trustees.

[Approved by Governor September 16, 2004. Filed
with Secretary of State September 16, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1248, Bowen. Statewide Registry: trustees.

Existing law requires the Department of Justice to maintain the Statewide Registry of conservators, guardians, and trustees. Existing law requires any person who wishes to serve as a trustee to register with the Statewide Registry, and requires a court to remove a trustee who is not registered, as specified. Existing law excepts from the requirements of the Statewide Registry conservators, guardians, or trustees who are related to the conservatee, ward, trustor, or vested beneficiary by blood, marriage, or adoption. Existing law also excepts trustees who administer less than 6 trusts at the same time. Existing law requires the department to make information in the registry available to a court for any purpose, while otherwise keeping the information confidential. Existing law permits the department to disclose whether a person is registered with the Statewide Registry upon a request.

This bill would require the department to disclose, upon request, whether an individual is registered with the Statewide Registry, his or her educational background, and whether specified information received from a court has been filed. The bill would also require the department, upon written request by a member of the public, to provide access to certain information received from a court regarding the failure of a conservator, guardian, or trustee to properly perform his or her duties. The bill would remove the requirement that a court clerk forward specified complaints to the Statewide Registry and would instead require a court clerk to forward specified court findings and orders to the Statewide Registry regarding the failure of a conservator, guardian, or trustee to properly perform his or her duties. The bill would require the Statewide Registry to include this information in the file of that conservator, guardian, or trustee. The bill would also permit a court to not remove a trustee who has failed to register if the court finds reasonable grounds not to do so, and would require a court to order a trustee to register or be removed within 90 days, as specified.

The bill would except from the requirements of the Statewide Registry a conservator, guardian, or trustee when the person is related to the conservatee, ward, or trustor of the trust through domestic partnership or a relationship that satisfies specified criteria. The bill would additionally except from the requirements of the Statewide Registry a trustee who is serving for the benefit of not more than 3 people or not more than 3 families, or a combination thereof, as defined. The bill would remove specified relationships with a vested beneficiary as a means by which a conservator, guardian, or trustee is excepted from the requirements of the Statewide Registry, as described above, and would also eliminate the exception for trustees who administer less than 6 trusts at the same time.

This bill would incorporate additional changes in Section 2850 of the Probate Code proposed by AB 1155 that would become operative only if AB 1155 and this bill are both chaptered and become effective on or before January 1, 2005.

The people of the State of California do enact as follows:

SECTION 1. Section 2850 of the Probate Code is amended to read:

2850. (a) (1) The Department of Justice shall maintain a Statewide Registry and shall make all information in the registry available to the court for any purpose, but shall otherwise keep this information confidential, except as provided in this section.

(2) (A) On request, the registry shall disclose to the public the following:

(i) Whether an individual is or is not registered with the Statewide Registry.

(ii) Whether the Statewide Registry contains any information filed pursuant to subdivision (d) for a specific individual regarding his or her duties as a conservator, guardian, or trustee.

(iii) The educational background and professional experience of an individual registered with the Statewide Registry.

(B) Upon written request by a member of the public, the registry shall provide access to any information filed with the registry pursuant to subdivision (d) regarding a conservator, guardian, or trustee.

(3) Except as otherwise provided in Section 2854, all persons who wish to serve as a conservator, guardian, or trustee or who are currently serving as a conservator, guardian, or trustee shall register with the Statewide Registry and shall reregister every three years thereafter. "Registration" means the filing of a declaration pursuant to subdivision (b).



(b) All conservators, guardians, and trustees required to file information with the clerk of the court pursuant to Section 2340 or required to register pursuant to this chapter shall file a signed declaration with the Statewide Registry. A person who signs a declaration pursuant to this subdivision asserting the truth of any material matter which he or she knows to be false is guilty of a misdemeanor punishable by imprisonment for up to one year in a county jail, or a fine of not more than two thousand dollars (\$2,000), or both that fine and imprisonment. The declaration shall contain the following information:

- (1) Full name.
- (2) Professional name, if different from paragraph (1).
- (3) Business address.
- (4) Business telephone number or numbers.
- (5) His or her educational background and professional experience, including verification of any college or graduate degree claimed.
- (6) The names of the conservator's current conservatees, the guardian's current wards, or the current trusts administered by the trustee.
- (7) The aggregate dollar value of all assets currently under the conservator's, guardian's, or trustee's supervision.
- (8) Whether he or she has ever been removed for cause or resigned as conservator, guardian, or trustee in a specific case, the circumstances of that removal or resignation, and the case names, court locations, and case numbers.

(c) The Department of Justice may charge a reasonable fee to persons registering and reregistering with the Statewide Registry for the cost of that registration. The Department of Justice shall issue a certificate of registration to each registrant.

(d) If a court makes a finding that a conservator, guardian, or trustee has not properly performed the duties of a conservator, guardian, or trustee, and that finding results in an order for a surcharge for other than nominal damages or for removal of the conservator, guardian, or trustee, the court clerk shall forward a copy of the court's finding and order to the Statewide Registry, which shall include this information in the file of that conservator, guardian, or trustee.

SEC. 1.5. Section 2850 of the Probate Code is amended to read:

2850. (a) (1) The Department of Justice shall maintain a Statewide Registry and shall make all information in the registry available to the court for any purpose, but shall otherwise keep this information confidential, except as provided in this section.

(2) (A) On request, the registry shall disclose to the public the following:



(i) Whether an individual is or is not registered with the Statewide Registry.

(ii) Whether the Statewide Registry contains any information filed pursuant to subdivision (d) for a specific individual regarding his or her duties as a conservator, guardian, or trustee.

(iii) The educational background and professional experience of an individual registered with the Statewide Registry.

(B) Upon written request by a member of the public, the registry shall provide access to any information filed with the registry pursuant to subdivision (d) regarding a conservator, guardian, or trustee.

(3) Except as otherwise provided in Section 2854, all persons who wish to serve as a conservator, guardian, or trustee or who are currently serving as a conservator, guardian, or trustee shall register with the Statewide Registry and shall reregister every three years thereafter. “Registration” means the filing of a declaration pursuant to subdivision (b).

(b) All conservators, guardians, and trustees required to file information with the clerk of the court pursuant to Section 2340 or required to register pursuant to this chapter shall file a signed declaration with the Statewide Registry. A person who signs a declaration pursuant to this subdivision asserting the truth of any material matter which he or she knows to be false is guilty of a misdemeanor punishable by imprisonment for up to one year in a county jail, or a fine of not more than two thousand dollars (\$2,000), or both that fine and imprisonment. The declaration shall contain the following information:

(1) Full name.

(2) Professional name, if different from paragraph (1).

(3) Business address.

(4) Business telephone number or numbers.

(5) His or her educational background and professional experience, including verification of any college or graduate degree claimed.

(6) The names of the conservator’s current conservatees, the guardian’s current wards, or the current trusts administered by the trustee.

(7) The aggregate dollar value of all assets currently under the conservator’s, guardian’s, or trustee’s supervision.

(8) Whether he or she has ever been removed for cause or resigned as conservator, guardian, or trustee in a specific case, the circumstances of that removal or resignation, and the case names, court locations, and case numbers.

(9) In the case of a private professional conservator or a private professional guardian, compliance with the educational requirements

established by the Judicial Council for private professional conservators and private professional guardians.

(c) The Department of Justice may charge a reasonable fee to persons registering and reregistering with the Statewide Registry for the cost of that registration. The Department of Justice shall issue a certificate of registration to each registrant.

(d) If a court makes a finding that a conservator, guardian, or trustee has not properly performed the duties of a conservator, guardian, or trustee, and that finding results in an order for a surcharge for other than nominal damages or for removal of the conservator, guardian, or trustee, the court clerk shall forward a copy of the court's finding and order to the Statewide Registry, which shall include this information in the file of that conservator, guardian, or trustee.

SEC. 2. Section 2851 of the Probate Code is amended to read:

2851. (a) A court may not appoint a person as a conservator, guardian, or trustee unless that person, if required to register under Section 2850, is registered with the Statewide Registry.

(b) Any person serving as a conservator or guardian prior to January 1, 2000, who does not register with the Statewide Registry by either January 1, 2001, or by the date of the next required review pursuant to Section 1850, whichever is sooner, shall be removed as a conservator or guardian by the court. A trustee required to register under Section 2850 who has not registered with the Statewide Registry on or before January 1, 2005, shall be removed as a trustee by the court, unless the court finds reasonable grounds not to do so. If the court finds reasonable grounds exist for not removing the trustee for failing to register on or before January 1, 2005, the court shall order the trustee to register with the Statewide Registry within 90 days of the court's order and shall remove the trustee if the trustee has failed to register at the end of the 90-day period.

(c) In appointing, continuing the appointment, or removing a person as conservator, guardian, or trustee, the court shall examine and consider the information contained in the Statewide Registry for that person. The information contained in the Statewide Registry shall be made available to the court for this purpose, but shall otherwise be kept confidential, except as provided by law.

SEC. 3. Section 2854 of the Probate Code is amended to read:

2854. (a) This chapter does not apply to any public conservator or public guardian with regard to his or her official acts in that capacity.

(b) This chapter does not apply to any conservator, guardian, or trustee when the person is related to the conservatee, ward, or trustor by blood, marriage, adoption, registered domestic partnership, or a relationship that satisfies the requirements of subdivision (a) and



paragraphs (1) to (4), inclusive, and paragraph (6) of subdivision (b) of Section 297 of the Family Code.

(c) This chapter does not apply to any trustee who is serving for the benefit of not more than three people or not more than three families, or a combination of people or families that does not total more than three. The number of trust beneficiaries does not count for the purposes of calculating if a trustee falls within this exclusion. A trust excluded under subdivision (a) or (b) does not count for the purpose of calculating if a trustee falls within this exclusion. For the purposes of this subdivision, family means people who are related by blood, marriage, adoption, registered domestic partnership, or a relationship that satisfies the requirements of subdivision (a) and paragraphs (1) to (4), inclusive, and paragraph (6) of subdivision (b) of Section 297 of the Family Code.

(d) This chapter does not apply to any conservator or guardian who is not required to file information with the clerk of the court pursuant to Section 2340, to any person or entity subject to the oversight of a local government, including an employee of a city, county, or city and county, or to any person or entity subject to the oversight of the state or federal government, including an attorney licensed to practice law in the State of California who acts as trustee of only attorney client trust accounts, as defined in Section 6211 of the Business and Professions Code.

(e) This chapter does not apply to any conservator who resided in the same home with the conservatee immediately prior to the condition or event that gave rise to the necessity of a conservatorship. This subdivision does not create any order or preference of appointment, but simply exempts a conservator described by this subdivision from registration.

(f) This chapter does not apply to a nonrelated guardian of the person of a minor appointed by the court as the result of the selection of a permanency plan for a dependent child or ward pursuant to Section 366.26 of the Welfare and Institutions Code. It also does not include a nonrelated guardian of the person of a minor appointed pursuant to Section 1514 if that child is in receipt of AFDC-FC payments and case management services from the county welfare department, as evidenced by a Notice of Action of AFDC-FC eligibility.

(g) This chapter does not apply to a trustee who is any of the following:

(1) Trust companies, as defined in Section 83.

(2) FDIC insured institutions, their holding companies, subsidiaries or affiliates. For the purposes of this paragraph, “affiliate” means any entity that shares an ownership interest with or that is under the common control of, the FDIC insured institution.



(3) Employees of any entity listed in paragraph (1) or (2) while serving as trustees in the scope of their duties.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 2850 of the Probate Code proposed by both this bill and AB 1155. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 2850 of the Probate Code, and (3) this bill is enacted after AB 1155, in which case Section 1 of this bill shall not become operative.

